

**[PRINTED IN ENGLISH AND SPANISH]**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

GERARDO VALDEZ LUJAN, individually and on behalf of all other persons similarly situated who were employed by CABANA MANAGEMENT, INC. and/or GLENN FRECHTER; and/or any other entities affiliated with or controlled by CABANA MANAGEMENT, INC. and/or GLENN FRECHTER,

Plaintiffs,

- against -

CABANA MANAGEMENT, INC and/or GLENN FRECHTER, and/or any other entities affiliated with or controlled by CABANA MANAGEMENT, INC. and/or GLENN FRECHTER,

Defendants.

No. 10 cv 755  
(ILG) (RLM)

**NOTICE OF  
PROPOSED  
CLASS ACTION  
SETTLEMENT**

TO: Plaintiff and all current and former employees of Cabana Forest Hills, Cabana East or Midtown, and Cabana South Street Seaport who performed work as servers, hosts(esses), bartenders, busboys, runners, other customarily defined “front of the house” restaurant related tasks during the Settlement Period. Corporate officers, shareholders, directors, administrative employees, and other customarily exempt employees are not part of the proposed class. Cooks, food preparers, dishwashers, porters or others who perform customarily defined “back of the house” restaurant related tasks are not part of the proposed class.

DATED: October \_\_, 2012

**PLEASE READ THIS NOTICE CAREFULLY**

**This Notice relates to a proposed settlement of class and collective action litigation. It has been authorized by a federal court. It contains important information as to your right to participate in the settlement, make a claim for payment or elect not to be included in the class.**

Introduction

Former employee of Defendants, GERARDO VALDEZ LUJAN filed a lawsuit for unpaid wages, including overtime wages and other damages against Defendants. The Court in charge of this case is the United States District Court for the Eastern District of New York. The lawsuit is known as *Lujan v. Cabana Restaurant*. The individual who filed the lawsuit is called the Plaintiff. Mr. Lujan alleges in the lawsuit that, among other things, Defendants failed to pay him and other similarly situated servers, runners, bussers all wages, including for overtime for the hours worked over 40 in a workweek, in violation of the Fair Labor Standards Act (“FLSA”) and New York State Law. Mr. Lujan also claims that servers, bussers and runners were not compensated correctly for all earned gratuities.

Plaintiffs and Defendants have agreed to settle the action subject to the approval of the Court. Defendants deny any wrongdoing, but have decided to settle the case. The Court has not decided who is right and who is wrong. Your legal rights may be affected, and you have a choice to make now. These rights and options are summarized below and fully explained in this Notice.

### **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

**PARTICIPATE** As described more fully below, to participate in the settlement send a properly completed Claim Form and Release to the Claims Administrator that must be mailed and post-marked by \_\_\_\_\_. If you fail to mail a timely Claim Form and Release post-marked by \_\_\_\_\_, you will receive no monetary distribution from the settlement.

**EXCLUDE YOURSELF** If you wish to exclude yourself from the lawsuit you must follow the directions outlined in response to question 11 below.

**OBJECT** Write to the Court about why you believe the settlement is unfair or unreasonable. If the Court rejects your objection, you will still be bound by the terms of the settlement for claims under New York Law unless you submit a valid and timely Request for Exclusion. You will not be bound by the settlement if you exclude yourself as described herein. If you object you may appear at the Fairness Hearing to speak to the Court about your reasons for objecting to the fairness of the settlement.

#### **1. Why did I receive this notice?**

You have received this notice because Defendants' records show that you previously worked as a server, bartender, busboy or runner during the time period from February 20, 2004 through March 1, 2010.

#### **2. What is a class action?**

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These other people are known as Class Members. In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable Judge I. Leo Glasser, and the Honorable Magistrate Judge Roanne Mann, United States District Court for the Eastern District of New York, are presiding over this class action.

#### **3. Why is there a settlement?**

Class Counsel analyzed and evaluated the facts in dispute and merits of the claims made against Defendants in the Litigation, investigated Defendants' pertinent payroll policies, participated in

numerous depositions of the Defendants and the Plaintiffs, engaged in extensive motion practice, analyzed thousands of pages of payroll data for Plaintiffs and a significant sample of the putative Class Members and evaluated Defendants' evidence and ability to pay a judgment. Based upon their analysis and evaluation of this data, relevant law, and the substantial risks of continued litigation, including the possibility that the litigation, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Plaintiffs' Counsel entered into this proposed settlement. Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Agreement is in the best interest of the Named Plaintiffs and Putative Class Members. Your estimated portion of the settlement will be based on the number of weeks you worked during the class period.

#### **4. What is my proposed settlement amount?**

Individual Cabana Employee Settlement Allocations are computed as follows:

- A. All individuals who previously notified Class Counsel of their intention to participate in this action ("V&A Claimants") shall be entitled to a settlement wage award of \$75.00 per week for every week worked during between the Settlement Period, less paid set-offs from prior audits.
- B. All other members of the Class who elect to participate in this settlement (called "Claimants") shall be entitled to a settlement wage award of \$55.00 per week for every week worked during the Settlement Period, less paid set-offs from prior audits. Defendants have agreed to pay a sum not to exceed \$250,000 to the Claimants. If the aggregate of all Claimants' claims exceed \$250,000 then their individual allocations shall be prorated down so that Defendants do not pay a sum of more than \$250,000.
- C. The Named Plaintiff Lujan, Ana Ruiz, Maria Carmenza Guevara and Cesar Vargas shall each receive an additional service award in the amount of three thousand dollars (\$3,000) for assisting Plaintiffs' counsel in the prosecution and settlement of this lawsuit.
- D. Defendants shall be entitled to a set-off of all amounts paid to any V&A Claimant and Claimants who was paid a sum of money during the Settlement Period. The names and amounts paid by Defendants are contained in the information provided to Class Counsel and the Administrator.
- E. Payment to all Claimants, V&A Claimants and for professional costs and fees shall be made on May 1, 2013 or within 20 days of the Final Effective Date of this settlement which ever is later.
- F. The Cabana Defendants, may, at their option, pay the amounts allocated to the Claimants, and for professional fees and costs, in one lump sum on or before May

1, 2013, in which case the single payment shall be discounted by five percent (5%).

## **5. Procedures**

To receive a distribution from the settlement fund, you must timely complete and return the enclosed Claim Form and Release according to instructions provided on the form, including: (1) an acknowledgement that, by signing the Claim Form and Release, you wish to participate in to the case and be subject to payment under the Fair Labor Standards Act and the New York Labor Law; and (2) a release of claims consistent with that set forth in paragraph 10 of this Notice. The Claim Form and Release must be personally filled out by the current or former employee who seeks to participate in the Settlement.

The Claim Form and Release must be properly completed, signed, and mailed to the Claims Administrator via First Class United States Mail, and post-marked by \_\_\_\_\_. If you do not properly complete and timely submit the Claim Form and Release, you will not be eligible to receive any monetary distribution.

You should keep in mind that if you do not opt out, and if you do not properly and timely complete and return the Claim Form and Release in accordance with instructions provided on the form, you will not receive a distribution from the settlement fund, but you will still be bound by the Release of all New York Labor Law claims as described in response to question below.

If you timely file the enclosed claim form so that it is postmarked by \_\_\_\_\_, the Settlement Claims Administrator will make any payment after a Fairness Hearing to be held by the Court.

If the Court grants final approval of the Settlement, this action will be dismissed with prejudice and Class Members who do not opt out will fully release and discharge Defendants through the Final Effective Date from all New York Labor Law claims asserted in the Complaint. This means that you cannot sue, continue to sue, or be party of any other lawsuit against Defendants regarding the New York Labor Law claims brought in this case. It also means that all of the Court's orders will apply to you and legally bind you. In addition, by signing the Claim Form and Release, all Class Members forever and fully release Defendants through the date upon which each Claimant signed his/her claim form from all possible claims.

The Release in the Settlement Agreement provides that:

By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement or are prohibited from release by law, each individual Class Member who does not timely opt-out pursuant to this Agreement forever and fully releases Defendants from all claims related to any of the facts or claims alleged in this Litigation. By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement or are prohibited from release by law, each individual Class Member who opts into the Litigation by filing a Claim Form pursuant to this Agreement forever and

fully releases Defendants from all Claims related to any of the facts or claims alleged in this Litigation .

**6. How Do I Exclude Myself From The Settlement.**

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue Defendants, on your own, about the legal issues in this case or which could have been brought in this case, then you must take steps to exclude yourself from this case. If you intend to exclude yourself, you must mail a written, signed statement to the Claims Administrator stating “I opt out of the Cabana wage and hour settlement” and include your name, job title, address, and telephone numbers (“Opt-out Statement”). To be effective, the Opt-out Statement must be mailed to the Claim Administrator via First Class United States Mail, postage prepaid, and postmarked by \_\_\_\_\_.

Claims Administrator  
FRG Information Systems  
P.O. Box 460 Peck Slip Station  
New York, NY 10272-0460  
RE: Cabana

If you exclude yourself from the Lawsuit and Settlement, you will NOT be allowed to object to the settlement as described below.

**7. If I exclude myself from the settlement, can I sue Defendants for the same thing later?**

Yes and No. If you exclude yourself, you still have a right to sue Defendants under the FLSA. However, by excluding yourself you give up any rights to sue Defendants for the New York Labor Law claims brought in this case or which could have been brought in this case.

**8. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, you will not receive any money from this lawsuit. But, you may sue, continue to sue, or be part of a different lawsuit against Defendants regarding these same claims.

**9. Do I have a lawyer in this case?**

Lloyd Ambinder, Esq., of the law firm of Virginia & Ambinder, LLP, lambinder@vandallp.com, www.vandallp.com , Trinity Centre, 111 Broadway, Suite 1403, New York, New York, 10006 has been designated by the Court to represent you and the other Class Members. These lawyers are called Class Counsel. You will not be charged separately for these lawyers. Their fees are being paid from the total settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

**10. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of up to \$462,000 for attorneys' fees and for litigation expenses and costs to be paid from the settlement fund. The fees would pay Class Counsel for investigating the facts and negotiating and overseeing the settlement. The Court will ultimately decide the amount that will be paid to Plaintiffs' attorneys for their services.

#### **11. How do I tell the Court that I don't like the settlement?**

You can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. If the Court rejects your objection, you will still be bound by the terms of the settlement of your claims under New York Law unless you have submitted a valid and timely request for exclusion. To object, you must send a letter saying that you object to the settlement of *Lujan v. Cabana*. Your statement must include all reasons for the objection and any supporting documentation. Your statement must also include your name, job title, address, email address and telephone numbers. If you wish to present your objection to the Court at the Fairness Hearing described below, you must state your intention to do so in your written objection. You will not be allowed to present reasons for your objection at the Fairness Hearing that you did not describe in your written objection. Mail the objection to the settlement Claims Administrator via First-Class United States Mail, postage prepaid at the address below. Your objection will not be heard unless it is mailed to the Claims Administrator via First Class United State Mail and postmarked by \_\_\_\_\_.

Claims Administrator  
FRG Information Systems  
P.O. Box 460 Peck Slip Station  
New York, NY 10272-0460  
RE: Cabana

The Claims Administrator will forward your objection statement to Defendants' Counsel and Class Counsel. You may not object to the settlement if you submit a letter requesting to exclude yourself or "opt-out" of the settlement of the lawsuit.

#### **12. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. The Court will hold a fairness hearing to decide whether to approve the settlement. Class Counsel will answer questions the Judge may have. You do not have to come to the hearing, but you are welcome to do so at your own expense. If you send an objection, it is not necessary for you to come to Court to talk about it, but you may do so at your own expense or pay your own lawyer to attend. As long as you mailed your written objection on time, the Court will consider it. If you do attend the hearing, you may not speak unless you timely object in writing as described above and notify the Court of your intention to appear at the fairness hearing.

**13. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Fairness Hearing at \_\_:00 pm on \_\_\_\_\_, 2013, at the United States District Court for the Eastern District of New York, \_\_\_\_\_, Brooklyn, New York, in Courtroom \_\_\_\_\_. At this hearing the Court will consider whether the terms of the settlement are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**14. Are there more details about the settlement?**

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can review the settlement agreement by asking to review a copy of the Settlement Agreement by writing to Lloyd Ambinder of the law firm of Virginia & Ambinder, LLP, [www.vandallp.com](http://www.vandallp.com), [Lambinder@vandallp.com](mailto:Lambinder@vandallp.com), Trinity Centre, 111 Broadway, Suite 1403, New York, New York, 10006.